IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT

(1) S.B.Civil Misc. Appeal No.55/1993
State of Rajasthan through Executive Engineer, P.W.D.,Udaipur vs. M/s Coudhary Construction Company,Jaipur

(2) S.B.Civil Misc. Appeal No.56/1993
State of Rajasthan through Executive Engineer, P.W.D.,Udaipur vs. M/s Coudhary Construction Company,Jaipur

against the judgment and decree dated 29.10.1992 passed by the learned District Judge, Udaipur in Civil Misc. (Arbitration) Cases No.5/92 & 2/92.

Date of Judgment: July 21, 2006.

PRESENT
HON'BLE MR. PRAKASH TATIA,J.

Mr. S.K. Vyas, Govt. Advocate for the appellant.
Ms. Rekha Borana for the respondent.

BY THE COURT:

These two appeal are beause of the reason that the civil court by common order dated 29.10.1992 accepted the application of the respondent-contractor under Section 14 of the Arbitration Act, 1948 and by the same order rejected the objection raised by the appellant against the award passed by the arbitrator on 28.9.1991.

Brief facts of the case are that the contract was awarded to the respondent-contractor by the appellant's department in the year 1980-

81. The work was completed on 5.8.1984. According to the claimant, he received the final bill payment on 21.2.198 but that was under protest. The contractor raised dispute, upon which the then Addl. Chief Engineer of the appellant's department was appointed as arbitrator by order dated 2.2.1988. Notices were given to the parties, who submitted their claims, reply, rejoinder and documentary evidence. The time for making the award was extended by the order of the District Judge, Udaipur dated 14.8.1991 and the time was extended upto 30.9.1991. The claimant raised two claims; one for Rs.11191.81 and another claim was of Rs.68,141.23, in total Rs.79,333.04. The learned Arbitrator allowed the claim of the respondent of Rs.68,141.23. The learned Arbitrator rejected the contractor's claim of pendente lite interest from 24.2.1988 to 27.9.1991. The learned Arbitrator further awarded interest @ 15% per annum from the date of award to the date of payment of the decree which may be passed by the civil court while making the award rule of the court following the decision of the Delhi High Court reported in M/s Megnum Films v. M/s Golecha Properties(AIR 1986 Delhi 320).

The contractor submitted application for making the award dated 29.10.1992 rule of the court, whereas the appellant-State submitted objection and prayed for setting aside of the award. The court below, by order dated 29.10.1993 rejected the appellant's objection and made the award rule of the court. Hence these appeals.

The appellant in these appeals, raised ground that the learned Arbitrator committed error in accepting the claim of the respondent for spreading of material to proper camber in layers and the learned Arbitrator wrongly awarded extra amount beyond the rate fixed in the G-Schedule of the agreement. In addition to above, the appellant in the appeal also submitted that the objection filed by the appellant was not considered nor the evidence was considered by the learned Arbitrator before passing the award. It is also submitted by the learned counsel for the appellant that the learned District Judge wrongly rejected the objection raised by the appellant about the jurisdiction of the arbitrator in passing the award on the ground that the said objection was not raised by the appellant before the arbitrator. The appellant even submitted that in fact there is no arbitration agreement and the learned District Judge erred in interpreting clause 23 of the agreement.

The learned counsel for the respondent submitted that it is clear from bare perusal of the objection raised by the appellant-State before the court below that no ground is made out as envisaged under Section 30 of the Arbitration Act, 1948. It is submitted that the learned Arbitration carefully considered the evidence and thereafter passed the impugned order. The award is a reasoned one and it is not the case of the appellant that the learned Arbitrator has misconducted or has malafidely passed the order or travelled beyond its jurisdiction. It is also

submitted that on factual aspects also there is no error in the award, which is clear from the the pleas taken by the appellant in the objection petition as well as in the appeals. The appellant could not even dispute the amount which was claimed by the contractor.

I considered the submissions of the learned counsel for the parties and perused the record also.

It appears from the reasons given by the court below in its order dated 29.10.1992 that the court below has carefully considered all objections raised by the appellant and the learned counsel for the appellant failed to point out any error of even fact for which the objections have been raised by the appellant before the arbitrator. The appellant already submitted to the jurisdiction of the arbitration without raising any objection about the jurisdiction and, therefore, the appellant had no right to raise objection about the jurisdiction of the arbitrator who passed the award. The court below also considered the objection of the appellant about the pleaof limitation. The court held that the claimant received the payment of the last bill on 21.2.1985 which was under protest. He submitted his claim, upon which the arbitrator was appointed and the claimant submitted his claim before the arbitrator, which cannot be said to be barred by any law. The claimant-contractor from 21.2.1985 gave several letters to the appellant-State for payment which was duly replied and when the

contractor failed to get the amount, he raised this dispute. The claim raised by the contractor, cannot be said to be barred by any law. The clause 23 of the agreement clearly provides for settlement of dispute through arbitration.

In view of the above reasons, I do not find any merit in these appeals and both the appeals are hereby dismissed.

(**PRAKASH TATIA),J.**

mlt.